

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH L. FERGUSON, et al. : CIVIL ACTION
:
v. :
:
VALERO ENERGY CORP., et al. : NO. 06-540

ORDER

AND NOW, this 24th day of April, 2009, upon consideration of the Defendants' Motion for Partial Summary Judgment as to the Ferguson Plaintiffs' First Amended Complaint on Certain Damage Issues (Docket No. 153), the plaintiffs' opposition, the defendants' reply thereto, and after oral argument held on March 4, 2009, IT IS HEREBY ORDERED, for the reasons set forth in a Memorandum of today's date, that the Motion is GRANTED IN PART AND DENIED IN PART as follows:

1. The defendants' motion for partial summary judgment as to paragraph 82(a) of the amended complaint, seeking damages under the Delaware Wrongful Death Statute for "future or prospective wages that John Jerry Ferguson, Jr.[,] would have contributed to his father and/or left to his estate during his natural lifetime, including any benefits of employment lost due to his death that would have passed to his father, siblings and/or estate" is GRANTED IN PART, as follows:

a. Summary judgment is GRANTED to the defendants as to the plaintiffs' claims for damages for future wages that

the decedent would have contributed to his father's support, and this claim is DISMISSED.

b. The defendants have not moved for summary judgment on the plaintiffs' claims for damages for the amount of future wages that the decedent would have left to his estate at the end of his natural life. The amount recoverable on this claim is limited to the amount of future lost earnings that the decedent would have saved, over and above his living expenses, and passed to his estate at the end of his life expectancy.

2. The defendants' motion for partial summary judgment as to paragraph 82(c) of the amended complaint, seeking damages under the Delaware Wrongful Death Statute for "the loss of the value of household services that John Jerry Ferguson, Jr.,] would have contributed to his father, John Jerry Ferguson, Sr.," is DENIED.

3. The defendants' motion for partial summary judgment as to paragraph 82(e) of the amended complaint, seeking damages under the Delaware Wrongful Death Statute for "the mental anguish to John Jerry Ferguson, Sr.,] resulting from the loss of his eldest son" is GRANTED, and this claim is limited to the mental anguish suffered by John Jerry Ferguson, Sr., from the time of his son's accident on November 5, 2005, and John Jerry Ferguson, Sr.'s death on April 22, 2006.

4. The defendants' motion for partial summary judgment as to paragraph 82(f) of the amended complaint, seeking damages under the Delaware Wrongful Death Statute for "the mental anguish to [the decedent's] siblings, Kenneth L. Ferguson and Michael Ferguson, resulting from the loss of their eldest sibling" is GRANTED, and this claim is DISMISSED.

5. The defendants' motion for partial summary judgment as to paragraph 82(g) of the amended complaint, seeking damages under the Delaware Wrongful Death Statute for "the loss of contributions for support incurred by the family as a result of the death of John Jerry Ferguson, Jr.," is GRANTED IN PART to the extent that this paragraph seeks to recover damages for contributions made by the decedent to family members other than his father; it is DENIED as to damages for loss of the decedent's contributions in services to John Jerry Ferguson, Sr.

6. The defendants' motion for partial summary judgment as to paragraph 82(h) of the amended complaint, seeking damages under the Delaware Wrongful Death Statute for "any and all other damages recoverable as a matter of law" is GRANTED, and this claim is DISMISSED.

7. The defendants' motion for partial summary judgment as to paragraph 86(b) of the amended complaint, seeking damages under the Delaware Survivor's Act for "any and all damages for reasonable and necessary medical bills incurred in an

attempt to revive or save the life of John Jerry Ferguson, Jr.," is GRANTED and plaintiffs' claim for such damages is limited to \$4,251.80, the amount of the medical bills listed in the plaintiffs' initial Rule 26 disclosures.

8. The defendants' motion for partial summary judgment as to paragraph 86(c) of the amended complaint, seeking damages under the Delaware Survivor's Act for "any and all hedonic damages allowed for the loss of decedent's life and the enjoyment of future life as permitted by Delaware law, or as evidence of a measure of the pain and suffering and mental anguish sustained by John Jerry Ferguson, Jr., is GRANTED IN PART, as follows. The plaintiffs' claim for "hedonic damages" under the Delaware Survivor's Act is DISMISSED. The plaintiffs may seek to introduce evidence of the decedent's hedonic damages as evidence of the decedent's pain and suffering, but this is without prejudice to the defendants' right to file a motion in limine at the appropriate time, seeking to exclude such evidence.

9. The defendants' motion for partial summary judgment as to paragraph 86(e) of the amended complaint, seeking damages under the Delaware Survivor's Act for "any other damages

permitted by law, including lost wages" is GRANTED, and this claim is DISMISSED.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.